IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 9113 of 2004

Between:

M/s. M. Rama Krishna Reddy, Civil Contractors,
8-3-208, Type 'B' Phase-II, Kamalapuri Colony,
Srinagar Colony, Hyderabad - 500 073
rep by its Managing Partner …Petitioner

AND

1 The Govt. of A.P. rep by the Principal Secretary
Roads & Buildings Department, A.P. Secretariat, Saifabad, Hyderabad.
2 The Commissioner of Tenders,
Burgula Rama Krishna Rao Bhavan, Tank Bund, Hyderabad.
3 The Chief Engineer (R & B) Roads,
Office of Engineer-in-Chief, Errumanzil, Hyderabad.
4 The Superintending Engineer(R &B) Circle, Cuddapan district, Cuddapah
5 M/s. Sri Harsha Constructions, 8-3-191/101, (17/B), 1st Floor
Opposite : Post Office, Vengalarao Nagar, Hyderabad - 500 036

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or direction more particularly a direction in the nature of Writ of Mandamus declaring the action of Respondent No.2 in awarding the contract pertaining to construction of High Level Bridge across Pennar at Siddoutam in pursuance of NIT No. 4/CE (R & B) Roads/CRF/EE(R)/ TA-11/AEE-2/2003 dt. 6-11-2003 as arbitrary, illegal and against the tender conditions and consequently direct the Respondents 2 to 4 award the contract to the petitioner as he is only the other qualified bidder who participated in the tenders.

Counsel for the Petitioner: MR.PRASAD RAO VEMULAPALLI

Counsel for the Respondents 1 to 4: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No.5: Mr.P.M.Gopala Krishna

The Court made the following :

O R D E R :

The petitioner herein, which is a partnership firm doing business in contracts of civil nature, filed this Writ Petition seeking a Writ of Mandamus declaring the action of the second respondent in awarding contract pertaining to construction of high level bridge across river Pennar at Siddhoutam in pursuance of the tender notification issued on 06.11.2003 as bad and illegal.

The case of the petitioner is that in pursuance of the aforesaid tender notification issued on 06.11.2003 notifying tenders by the second respondent herein for the above mentioned work, the petitioner filed tender after complying all the requirements including deposits, etc. The last date for the tender was on 22.11.2003. As per the requirements thereunder, the petitioner was registered as a special class contractor with the Government of Andhra Pradesh vide proceedings dated 25.06.1999. In regard to the qualifications as prescribed, the petitioner fully satisfies all the qualifications. On receipt of the tenders, the same were opened on 22.11.2003 and it was found that there are only two tenders, namely of the petitioner and of the contesting party, the fifth respondent. However, in spite of the fact that the petitioner fully qualifies for the same, the respondents 1 to 4 accepted the tender of the fifth respondent, who was summoned on 13.05.2004 for the purpose of executing agreement. The case of the petitioner in the forefront is that the fifth respondent, in fact, does not fully qualify in regard to the terms and conditions as contemplated in the notification. The fifth respondent executed the work not as prime contractor, but executed the same as a sub contractor of M/s. Madhucon Bina Puri JV, and so, he does not satisfy the clauses 13.3 or 13.4 of the tender notification. Therefore, he can not be termed as qualifier and he is not entitled to issuance of

any contract in terms of the said tender. Hence, the Writ Petition.

Contesting the claim, the case of the respondents 1 to 4 is one of denial in regard to the allegations as to the qualification as submitted, and further it was stated that having received tenders in terms of the aforesaid tender notification, they have considered the work turn out of the fifth respondent and found that the earth work executed by him is more than the requirements of the department and therefore, he is fully qualified. Hence, there are no merits in the contention of the petitioner. Further, it is also pointed out that the agreement has been duly executed on 15.05.2004 with the fifth respondent and therefore, filing of the present Writ Petition after lapse of six months, is only an after thought and is only with a view to cause hindrance to the work. Hence, the Writ Petition is liable to be dismissed.

In the counter affidavit filed by the fifth respondent it was stated that he fully satisfies the terms and conditions as contemplated under clauses 13.3 and 13.4 of the tender notification, and further as contemplated therein, he also falls well within the sub-contractors' qualifications in compliance with Clause 13 of the aforesaid G.O.Ms.No.8, Transport, Roads & Buildings (Roads-I) Department, dated 08.01.2003 (hereinafter referred to as 'the G.O."). The respondents 1 to 4 have considered all his credentials and awarded the contract. Therefore, it can not be faulted with. In regard to the extent of work executed, it was pointed out that he executed more than 11934 cu.m. of earth work as against tender notice requirement of 11784 cu.m. Further, it is also pointed out that he executed 81.72 RM of well sinking on its name and 112.70 RM as sub-contractor of M/s.Madhucon Bina Puri JV. Therefore, the allegations made in regard to non-satisfaction of the quantity of work, is not correct. Hence, there are no merits in the Writ Petition. Hence, it is liable to be dismissed.

Learned counsel appearing for the petitioner placing reliance on

clause 13.3 of the tender notification, submits that there is no compliance of the same as he does not satisfy the requirements in the G.O. and therefore, the contract ought not to have awarded in favour of the fifth respondent.

The learned Government Pleader appearing on behalf of the respondents 1 to 4 supporting the award of the work, submits that there is full compliance of requirements as to the quantity and therefore, the Writ Petition is liable to be dismissed.

Considering the submissions made and also on perusal of the record, the question which falls for consideration is as to whether the fifth respondent fulfils the terms and conditions as contemplated in the tender notification dated 06.11.2003 ?

Before going to the said question, it is necessary to extract condition as contemplated in the tender notification, which reads as follows:

"…3.3 QUALIFICATION CRITERIA FOR OPENING OF THE PRICE BID

> A) To qualify for opening the Price Bid each firm in its name should have, during the last five financial years from 1998-99 to 2002-2003 (specify the financial years; those immediately preceding the financial year in which the tenders are invited).
>
> a)Satisfactorily completed as a PRIME CONTRACTOR, similar works of value not less than Rs.244.46 Lakhs (at current price level) in any one year.
>
> Note: The cost of completed works of previous years shall be given weightage of 10% per year to bring them to current price level, (the financial year in which bids are invited).

b) Executed in any one year the following minimum physical quantities.

i. RCC/VRCC : 3333 cum.

ii.PCC/VCC : 2237 cum

iii. Earth work in both excavation & embankment

(combined quantities) : 11784 cum.

iv.Well sinking : 172 RMT

v.Other items depending on the work put to tender.

B) Each bidder should further demonstrate:

a)Availability (either owned or leased or to be procured against mobilisation advance of the following key and critical equipment for this work).

(i) Tippers of 5.5 cum capacity : 5 Nos.

(ii) 80 – 100 kN static weight rollers : 1 No.

(iii)Vibratory road roller : 1 No.

(iv) Concrete Mixers : 4 Nos.

(v) Weigh Batchers : 2 Nos.

(vi) Vibrators (Pin type) : 6 Nos.

(vii) Vibrators (Pan type) : 6 Nos.

(viii) Steel shuttering : 2500 Sq.m.

(ix) Joint cutting machine : 1 No.

Note: The major equipment to attain the completion of works in accordance with the prescribed construction scheme is to be shown in the above table.

b) Availability of key personnel

i. Graduate Engineer … 1 No.

ii.Diploma Holders with adequate experience … 1 No.

c) Liquid assets and/or credit facilities of not less than Rs.122.23 lakhs (credit facility / letter of credits / solvency certificates from Banks, etc.).

Bid capacity:

The tenderer who meets the above qualification criteria and whose available bid capacity is more than the estimated contract value will be qualified for opening of price bid. The available bid capacity will be calculated as under:

Available Bid Capacity:

Where,

A= Maximum value of civil engineering works executed in its name in any one financial year during the last five financial years (updated to current price level) taking into account the works completed as well as works in progress.

N = Number of years prescribed for completion of the work for which Tenders are invited (months/18)

B = Updated value (at current price level), of all existing commitments i.e. on going works, works likely to be awarded to be executed during the next one and half year (18 months). (Period of completion for which Tenders are invited).

Annual turnover, cost of completed works and balance works on hand etc., shall be updated by giving weightage of 10% per year to bring them to current price level.

No relaxation will be given to any of the qualification

criteria.

Note: a)Sub-contractor's experience, in his name will be taken into account in determining the Tenderer's compliance to the qualification criteria, if it is as per GO Ms.No.8, dt.8.1.2003.

b)The experience gained in a registered JV firm to the extent of the tenderer's share shall be considered if the tenderer happens to be the lead partner, for similar works criteria also."

As prescribed in the aforesaid notification, it is thus necessary that there should be satisfactory completion as prime contractor for similar works of value not less than Rs.244.46 lakhs and further that even the experience as sub-contractor in his name will be taken into account in determining compliance as to the qualification criteria if it is in terms of the G.O.

Clause 13 of the aforesaid G.O.Ms.No.8, Transport, Roads & Buildings (Roads-I) Department, dated 08.01.2003, reads as under:

> "If the prime contractor desires to sub-let a part of the work, he should submit the same at the time of filing tenders itself or during execution, giving the name of the proposed sub-contractor. The Tender Accepting Authority should verify the experience of the sub-contractor and if the sub-contractor satisfies the qualification criteria in proportion to the value of work proposed to be sub-let, he may permit the same. The total value of works to be awarded on sub-letting shall not exceed 50% of contract value. The extent of sub-letting shall be added to the experience of the sub-contractor and to that extent deducted from that of the main contractor."

As per the above, it is evident that if any work of sub-contractor is to be taken, necessarily it should be that of a recommended contract and not otherwise. Thus, any work as sub-contractor unless recommended and accepted by the authorities, is of no consideration nor can it form any basis for claiming any such entitlement.

Admittedly, in this case, the fifth respondent does not fall well within the aforesaid condition of the G.O. Since it is not his case that he is a recommended sub-contractor, whose work has been undertaken in such capacity. Therefore, any such experience without any recommendation would not fall within clause 13 of the G.O. Unless such satisfaction is accepted in terms of the G.O., the fifth respondent can not place any reliance on the experience and claim any benefit thereunder. Thus, in the absence of such recommendation, the fifth respondent would not fall within the qualification as contemplated nor would it come under the aforesaid qualification as directed since there is no compliance as to the terms and conditions of the G.O.

On the face of it, the impugned action on the part of the respondents 1 to 4 in allotting the work to the fifth respondent, who is unqualified, is in the teeth of the very terms and conditions as contained in the tender notification.

In the circumstances, the Writ Petition is allowed, setting aside the impugned orders dated 06.11.2003 allotting the work in favour of the fifth respondent. No costs.

05.11.2004

DRK

That Rule Nisi has been made absolute as above.

Witnesseth the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 05th day of November,2004.

Assistant Registrar

/True Copy/

Section Officer.

Copy to:

1 The Principal Secretary, Govt. of A.P.,
Roads & Buildings Department, A.P. Secretariat, Saifabad, Hyderabad.
2 The Commissioner of Tenders, Govt. of A.P.,
Burgula Rama Krishna Rao Bhavan, Tank Bund, Hyderabad.
3 The Chief Engineer (R & B) Roads,
Office of Engineer-in-Chief, Errumanzil, Hyderabad.
4 The Superintending Engineer(R &B)
Circle, Cuddapah District

5 Two CCs to the G.P. for Roads & Buildings, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

6 Two CD copies.